



## State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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ALTON TEACHERS ASSOCIATION  
NEA-NEW HAMPSHIRE

Complainant

v.

ALTON SCHOOL DISTRICT

Respondent

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CASE NO. T-0315:13

DECISION NO. 93-131

### APPEARANCES

#### Representing Alton Teachers Association:

Jan Paddleford, UniServ Director

#### Representing Alton School District:

Bradley F. Kidder, Esq.

#### Also appearing:

Steven Parker  
Nancy Zappone  
Paulette C. Alden  
Terri A. Noyes, Alton Parent  
Laurie Boyce, Alton Parent  
Arthur Thomits, Alton Parent  
Elaine Brigman, Alton School District  
Jack Henderson, Alton School District  
Donna Downie, Alton Teachers Association  
Charles A. Downie, Alton Teachers Association  
Richard J. Kirby, Alton Teachers Association

### BACKGROUND

The Alton Teachers Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the Alton School District (District) on June 21, 1993 alleging violations of RSA 273-A:5 I (a), (e) and (g) relative to the duty to bargain in good faith and to engage in the factfinding

procedures of RSA 273-A:12. It followed this with a Motion to Stay filed July 1, 1993. The District filed its answer and an Answer to the Association's Motion for Stay and Expedited Hearing on July 6, 1993 after which this matter was heard by the PELRB on August 24, 1993.

#### FINDINGS OF FACT

1. The Alton School District is a "public employer" of teachers and other employees within the meaning of RSA 273-A:1 X.
2. The Alton Teachers Association is the duly certified bargaining agent for teachers employed by the District.
3. The District and the Association are parties to a collective bargaining agreement (CBA) for the period September 1, 1991 through August 31, 1992 "and thereafter renew[s] itself automatically for successive terms of one year or until a successor agreement has been ratified." Assoc. Exhibit No. 1. The parties have been in the process of bargaining for a successor (i.e., after school year 1991-92) CBA since the fall of 1991. In January 21, 1992, the PELRB was notified of an acceptable mediator factfinder whose appointment was formalized January 14, 1992. By February 10, 1992 the parties had agreed to by-pass mediation. The factfinding report then issued March 1, 1992, which was later rejected by voters. The PELRB received a request for a second mediator on August 26, 1992 and was informed of the parties' agreement on a mediator by letter from Jan Paddleford on October 1, 1992. That mediator was appointed and met with the parties on November 19, 1992, retaining jurisdiction thereafter. By letter of January 5, 1992 the mediator informed the PELRB that the parties had advised that there was "little likelihood" that a second meeting would be effective and recommended factfinding.
4. By letter of January 21, 1993, Jan Paddleford, on behalf of the Association, requested factfinding. After the parties failed to agree on a factfinder, Factfinder Mark Grossman was appointed on February 11, 1993. He conducted a factfinding hearing on April 13, 1993 and issued his report on June 9, 1993. It was received by the PELRB on June 14, 1993.
5. By letter of June 17, 1993, Bradley Kidder, Esquire,

informed the PELRB that the Alton School Board (Board) had voted at its regularly scheduled school board meeting on June 14, 1993, to reject Grossman's factfinding report as untimely if it should subsequently be received. (Board Ex. No. 1) Supt. Elaine Brigman conveyed this vote to Kidder by telephone on June 15, 1993, not knowing that he had received the report on June 14, 1993. Kidder sent the copy of the report which he received back to Grossman, unopened, along with a letter of transmittal dated June 17, 1993. (Assn. Ex. No. 17) In particular, that letter cited Rule PUB 305.03 (b).

6. Rule 305.03 (b) provides, in pertinent part, that "the factfinder shall make and report findings of fact to the parties and to the board, together with his recommendations for resolving each of the issues remaining in dispute, within 30 days of his appointment unless the board otherwise directs."
7. Sometime during the April 13th factfinding hearing, probably near its commencement, Grossman, responding to an inquiry from the Association as to the amount of time it would take for him to prepare the report, advised Kidder and Paddleford that he "did not expect to be able to issue [his] recommendations with 30 days but would try to avoid any inordinate delays." Assn. Ex. No. 21. Grossman further asserts that he would have declined the case or issued his recommendations in advance of the discussion portion of his report had he known that the time limits would be strictly applied. In assuring the parties that he would issue the report as soon as possible, Grossman's comments were taken by Kidder to mean he would try to meet the 30 day standard. They were taken by Paddleford, according to her testimony, to mean that it would be impossible for the report to be issued in 30 days. After the foregoing disclosure by Grossman there is no evidence that either Paddleford or Kidder (or their principals) objected to proceeding with the factfinding hearing. Likewise, there is no evidence that either of them sought or obtained acquiescence from their principals that the issuance of the report might exceed the 30 days referred in Rule PUB 305.03 (b).
8. The parties agreed to a factfinding date of April 13, 1993. Grossman was appointed factfinder

on February 11, 1993; thus, the factfinding hearing was conducted more than 30 days after his appointment.

9. The PELRB has been liberal in construing the 30 day time limit of Rule PUB 305.03 (b), permitting it to run from the time the factfinding hearing or record, as the case may be, closed to the date the report is issued. Grossman's report of June 9, 1993 was issued more than 30 days after the close of the proceedings and the record in this case, it being noted that he was advised that his proffer of additional mediation was rejected, according to Paddleford, on April 22, 1993.
10. On June 17, 1993, Kidder wrote a letter to PELRB requesting another factfinder. The PELRB provided a list of factfinders to the parties by letter of June 21, 1993. (Assn. Ex. No. 18) By letter of June 24, 1993, the Association objected to the issuance of a second list of factfinders (Assn. Ex. No. 20) and filed a Motion to Stay on July 1, 1993.

#### DECISION AND ORDER

Our analysis in Orford Teachers Association, Decision No. 87-41 (June 23, 1987), is dispositive of this case. Both fact situations involve late fact finding reports vis-a-vis the thirty day requirement found at Rule 305.03 (b). In Orford, neither party objected to the fact finder's report "until after [it] was received, some 69 days after the hearing." This is to be contrasted to the facts in this case where the report was rejected by the District after the thirty day period but before it was received or its contents known.

In Orford we said, "If a party seeks to assert the delay as a reason to set aside factfinding, such an assertion must be made prior to receipt and/or consideration of the report....[A] party must object to the tardiness of a report prior to receipt of that report or prior to opening the report and reading it or the party will be deemed by the [PELRB] to have waived the objection." We are presented with no compelling reasons why this policy should not apply in the case at hand since it is clear that the rejection occurred before either the Board's receipt or reading of the report.

Rule 305.03 (b) contemplates circumstances where the 30 day limit may be extended namely, when "the [PELRB] otherwise directs." There was no request for such direction in this case from either

the fact finder or from the parties. Likewise, neither the fact finder nor the parties secured written resolution of what was clearly disclosed and not so clearly understood to be the time required by the fact finder to prepare the report. Without such a record or agreement, we are reluctant to impute acquiescence to the conduct of the parties, or either of them, which would contradict the general principles for such situations, as found in Orford.

We conclude our analysis of this case by noting that there was no exchange of documentation concerning mitigating circumstances prior to the expiration of the thirty days period found in Rule 305.03. Since the fact finding hearing itself was held more than 30 days from the date of appointment, by consent of the parties, the 30 day period would not start to run until the hearing was closed. That time limit was not met.

For the foregoing reasons, we vacate the fact finder's report and advise the parties that the PELRB will supply a new list of fact finders upon receipt of such a request from either or both of the parties dated after the issuance of this decision.

So ordered.

Signed this 4th day of November, 1993.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osman and Richard E. Molan, Esq., present and voting.